(15)

No. 90-1912

In The

# Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

*Petitioner,*

v.

KENNETH HAHN, in his capacity as Tax Assessor for Los Angeles County, and the COUNTY OF LOS ANGELES,

*Respondents.*

On Writ Of Certiorari To The Court Of Appeal Of The State Of California

## BRIEF OF AMICUS CURIAE INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS IN SUPPORT OF PETITIONER

James F. Gossett
*Counsel of Record*
Howe & Hutton, Ltd.
20 North Wacker Drive
Suite 3550
Chicago, Illinois 60606
(312) 263-3001

*Attorney for Amicus Curiae International Association of Assessing Officers*

Midwest Law Printing Co., Chicago 60611, (312) 321-0220

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

*Other Authorities*



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## INTEREST OF AMICUS CURIAE (AND REPRESENTATION AS TO CONSENT FOR FILING)

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Counsel for the International Association of Assessing Officers ("IAAO") has received written consent from counsel for the Petitioner and counsel for the Respondents to

the filing of an amicus brief by IAAO. Those written consents are being forwarded to the Clerk of the Supreme Court with this brief.

The International Association of Assessing Officers is a tax-exempt nonprofit educational membership organization under Section 501(c)(3) of the Internal Revenue Code, dedicated to improving the administration of the property tax and to improving the understanding of important property tax issues. Founded in 1934, the organization has approximately 8,250 members worldwide, who come from governmental, business and academic communities, including assessment agencies in all fifty states.

The eight objectives of IAAO are stated in the IAAO Constitution, Art. 1, Sec. 2, as follows: (1) to improve the standards of assessment practice; (2) to educate those engaged in assessment practice; (3) to elevate the standards of personnel requirements in assessment offices; (4) to educate the general public in matters relating to assessment practice; (5) to engage in research and to publish the results of studies in assessment administration; (6) to provide a clearinghouse for the collection and distribution of useful information relating to assessment practice; (7) to cooperate with other public and private agencies interested in improving assessment administration; and (8) to promote justice and equity in the distribution of the property tax burden. IAAO speaks here as an organization dedicated to equitable, efficient and credible property taxation, and not merely as a trade association for assessors.

IAAO is concerned about the assessment inequities that would result if the Supreme Court of the United States affirms the decision of the court below. In the decision of the Court of Appeal of the State of California, and in



the California Supreme Court's denial of review, the California courts have endorsed "welcome stranger" assessing, a system under which assessments are largely based on a property's most recent sale price rather than current market value.

A hypothetical example illustrated by a table below demonstrates the inequities of "welcome stranger" assessing. In the example, three *identical* properties are assumed to have had a market value of $39,000 in 1976, which increased to $87,000 by 1991. But the current tax bill for each property is significantly different under "welcome stranger" assessing, if we assume a nominal tax rate of four percent of assessed value and assessment on the basis of the property's *most recent sale price*:

| Property | Current Market Value | Year of Last Sale | Sale Price | Current Assessed Value | Current Tax Bill |
|---|---|---|---|---|---|
| 1 | $87,000 | 1976 | $39,000 | $39,000 | $1,560 |
| 2 | 87,000 | 1986 | 68,000 | 68,000 | 2,720 |
| 3 | 87,000 | 1991 | 87,000 | 87,000 | 3,480 |

Under the "welcome stranger" system of assessing, inequity in California assessments has already reached monstrous proportions, as shown by the horrific "real life" examples cited in the Petition for Writ of Certiorari (pp. 6-11). Furthermore, the harmful effects of that system will only multiply exponentially as years pass, even if (as seems unlikely) a sanctioning of "welcome stranger" assessing by this Court encourages no other states to adopt that practice.

IAAO believes that affirming the decision of the court below would jeopardize over seventy years of legislative, administrative and judicial progress in improving the equity of the property tax. Therefore, IAAO urges this Court

to reverse that decision, holding the "welcome stranger" system of assessment unconstitutional.

## SUMMARY OF ARGUMENT

IAAO submits that the Court of Appeal of the State of California erred in concluding that the California practice of systematically assessing recently sold properties on the basis of their selling price, while failing to reassess similar properties that have not recently sold, does not amount to discriminatory assessment prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Although this Court did not address the constitutionality of a state-sanctioned "acquisition value" system of property tax assessment in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), the logic of the Court's opinion in that case, and a correct analysis of constitutional equal protection requirements, should have compelled a ruling overturning California's assessment system.

This Court's decision in *Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350 (1918), established that "intentional and systematic" undervaluation of other property in the same class contravenes the constitutional rights of one taxed upon the full value of his property. Furthermore, this Court's decisions in a long line of cases demonstrate that, while state classification of property for tax purposes is constitutionally permissible, the "welcome stranger" assessment policy adopted in California following passage of Proposition 13 constitutes the kind of "in-



tentional and systematic" assessment discrimination that violates federal equal protection requirements, since California's "classification" system is not only grossly inequitable, but totally irrational.

The amicus believes that market value assessment would provide a remedy for the inequities that have arisen from California's adoption of "welcome stranger" assessing, but it is not necessary for this Court, in deciding the case at bar, to mandate market value assessment nationwide. Rather, the Court need only conclude that the current California system violates equal protection imperatives, leaving that state to develop an alternative system that does not improperly infringe on constitutional rights.

The Court should, however, consider the enormous personal hardships and practical difficulties that would be created by the retroactive application of a decision striking down California's "welcome stranger" assessment system. Therefore, the amicus urges this Court to hold that, in ad valorem property tax administration, the California practice of systematically assessing recently sold properties on the basis of their selling price, while not reassessing similar properties that have not been sold, is in violation of the Equal Protection Clause of the Fourteenth Amendment. But that decision should be given only prospective effect.

## ARGUMENT

### 1.

**In Ad Valorem Property Tax Administration, The California Practice Of Systematically Assessing Recently Sold Properties On The Basis Of Their Selling Price, While Failing To Reassess Similar Properties That Have Not Recently Sold—Commonly Known As "Welcome Stranger" Assessing—Is In Violation Of The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution.**

In this proceeding, involving a homeowner's challenge to an assessment placed on her property for ad valorem tax purposes by the Los Angeles County Assessor, the California Court of Appeal affirmed a lower court's dismissal of the Petitioner's suit for a declaratory judgment and tax refund, holding the California property tax assessment system established with the enactment of Cal. Const., Art. XIIIA (hereafter referred to as "Proposition 13") did not violate the Petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by causing similarly situated properties to be taxed disparately, and did not infringe on any constitutional right of citizens to travel interstate. *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 275 Cal. Rptr. 684 (1990). In reaching that decision, for which review was later denied by the California Supreme Court, the Court of Appeal determined the case was controlled by the California Supreme Court's ruling upholding the constitutionality of Proposition 13 in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 149 Cal. Rptr. 239, 583 P.2d 1281 (1978), despite the subsequent development of massive assessment



inequality in California and this Court's striking down "acquisition value" assessing in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989) (hereafter referred to as *Allegheny*).

IAAO believes that the Court of Appeal erred in concluding the *Allegheny* decision was inapposite, as *Allegheny* made it clear the systematic practice of reassessing properties which have sold, while not reassessing similar properties that have not been recently sold ("welcome stranger" assessing) violates federal equal protection requirements.[1] It is true that *Allegheny* involved discriminatory assessment at the *local* level, and the *Allegheny* Court was not required to decide whether the Webster County assessment method would "stand on a different footing" if it were the law of a *state* (488 U.S. at 344, fn. 4). Nevertheless, the reasoning of the Court's opinion in *Allegheny* and a correct analysis of equal protection requirements should have compelled a ruling overturning California's assessment system on equal protection grounds.

In *Allegheny*, the Court established that the constitutional requirement under the Equal Protection Clause is "the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." 488 U.S. at 343. The Court found a Webster County "acquisition value"-based assessment method unconstitutional, noting that county adjustments to the assessments of property

[1] Although IAAO is not here arguing California's assessing system violates "right to travel" guarantees of the U.S. Constitution, that fact should not be taken to suggest the amicus's disagreement with the Petitioner's argument that California's assessing system unconstitutionally burdens the right to travel, but simply the amicus's desire to focus on the broader inequities inherent in that system.

not recently sold were "too small to seasonably dissipate the remaining disparity between these (older) assessments and the assessments based on a recent purchase price." 488 U.S. at 344. Moreover, the Court recognized that the "intentional systematic undervaluation by *state* officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." 488 U.S. at 345 (*emphasis added*).

The principal distinction the Respondents offer between *Allegheny* and this case is that *Allegheny* did not directly deal with an "acquisition value"-based system sanctioned by *state* law comparable to Proposition 13. But this is a distinction without significance in view of the express language of the Fourteenth Amendment: "[N]or shall any *State* deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (*emphasis added*)." Furthermore, the fact that Proposition 13 was adopted by the referendum process cannot save California's assessing system from equal protection scrutiny, as this Court has confirmed, "It is plain that the electorate as a whole, whether by referendum or otherwise, could not order . . . action violative of the Equal Protection Clause." *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432, 448 (1985).

Under a proper analysis of equal protection requirements, the constitutionality of California's "welcome stranger" assessing system must be considered in light of this Court's early pronouncement that the purpose of the Equal Protection Clause is "to secure every person within the State's jurisdiction" against "intentional systematic" discrimination, "*whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.*" *Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350, 352-53 (1918) (*emphasis added*). In a long line of property tax cases following that pronouncement,[2] this Court's decisions have upheld the rule that a taxpayer can prove unconstitutional discrimination in assessing if it can be shown that disparities in assessed values result not from "mere errors of judgment" but from "something which in effect amounts to an intentional violation of the essential principle of practical uniformity." 247 U.S. at 353.



The Respondents in this case cannot argue that the discriminatory assessing system mandated by Proposition 13 is not intentional and systematic. Rather, they rely on this Court's decisions holding that, absent the involvement of a suspect category, such as race, or a category involving a fundamental freedom, such as the right to vote, states may adopt even intentionally discriminatory classifications of property for tax purposes, as long as there is a "rational basis" for such classifications.[3]

The amicus, however, does not argue against the broad power of the states to divide different *kinds* of property into *rationally* developed classes, since the Constitution clearly does not require states to treat "things which are different in fact . . . as though they were the same." *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966). The amicus contends only that California's "welcome stranger" assessing system fails the "rational basis" test, and should therefore be struck down by this Court as evidencing the kind of

[2] *See, e.g., Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441 (1923); *Southern Railway Co. v. Watts*, 260 U.S. 519 (1923); *Chicago G.W. Ry. v. Kendall*, 266 U.S. 94 (1924); *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County, Pennsylvania*, 284 U.S. 23 (1931).

[3] *See* Respondents' Brief in Opposition to the Petition for Writ of Certiorari, pp. 12-14.

intentional and systematic discrimination prohibited by the Fourteenth Amendment.

Under the "rational basis" test, discrimination is not to be supported by mere fanciful conjecture and cannot stand as reasonable if it offends "the plain standards of common sense." *Hartford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U.S. 459, 462 (1937). Arbitrary selection "cannot be justified by calling it classification." *Southern Railway Company v. Greene*, 216 U.S. 400, 417 (1910).

In previous cases, this Court has not hesitated to strike down state and local classification schemes because they violated the "rational basis" test. For example, in *Louis K. Liggett Co. v. Lee*, 288 U.S. 517 (1933), a *state* law levying privilege taxes on store owners was declared void because no rational basis could be found for levying a higher tax per store on owners with stores in several counties as opposed to owners with stores in the same county. Likewise, in *Southern Railway Company v. Greene*, 216 U.S. 400 (1910), discriminatory Alabama franchise taxes on foreign corporations were invalidated; and in *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920), the Court voided a tax on income of Virginia corporations derived from out-of-state operations where state law, without a rational basis, taxed only those corporations also having in-state business and exempted corporations that did no business in Virginia.[4]

[4] *Southern Railway Company v. Greene*, 216 U.S. 400 (1910), is particularly instructive, perhaps, because it dealt with a form of protection for current residents (in that case, resident corporations) comparable to the protections Californians may have intended to adopt when they approved Proposition 13. In a non-tax case, this Court has also invalidated the New York Milk Control Act for discriminating between milk dealers without well-advertised trade

(Footnote continued on following page)



On the other hand, the amicus believes that in none of the cases where this Court has voided tax classifications as unconstitutional, and certainly not in any of the cases cited by the Respondents where tax disparities have been allowed to continue, has this Court been required to evaluate the constitutionality of an assessment and/or tax system so devoid of rationality as California's "welcome stranger" assessing. Far from pursuing a futile quest for "precise, scientific uniformity in assessments" like the taxpayers in *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959), the Petitioner in this case, and the amicus, are challenging a system adopted in disregard of all contemporary standards in assessment administration, which has produced gross inequities in assessments and is guaranteed to produce even more illogical and inequitable results the longer it is allowed to remain in existence.

The inequities of "welcome stranger" assessing in California are clearly illustrated when the effective tax rates of various homeowners are compared.[5] For example, the estimated 1988 effective tax rate for California residential property not sold since Proposition 13 was enacted in 1978 was less than 0.3 percent, whereas the effective tax rate

[4] *continued*

names who were in business before April 10, 1933, and otherwise comparable milk dealers who entered the business after that date, demonstrating that classifications based on arbitrary dates will not pass the "rational basis" test. *See Mayflower Farms, Inc. v. Ten Eyck*, 297 U.S. 266 (1936).

[5] The effective tax rate is the stated tax rate expressed as a percentage of market value. The effective tax rate will be different from the stated tax rate where the assessment ratio is not equal to 1. The assessment ratio is the fractional relationship an assessed value bears to the market value of the property in question.

for recently sold properties was 1.0 percent, over three times higher.[6]

Inequity in an assessing system may also be viewed by reference to the most widely accepted index of assessment uniformity, the "coefficient of dispersion."[7] Coefficients of dispersion of 15 percent or less generally are regarded as indicative of satisfactory assessment performance for residential property, and coefficients of 20 percent or less are generally regarded as demonstrating satisfactory performance in assessing properties as a whole within any jurisdiction.

Data on coefficients of dispersion compiled by the U.S. Bureau of the Census during the quinquennial Census of Governments provide an indication of the effects on assessment performance of Proposition 13.[8] In 1976, the median coefficient of dispersion of California counties surveyed was 17.1, whereas by 1981, the comparable measure had risen to 28.2. In 1976, California ranked sixth among states nationwide in terms of this measure of assessment uniformity, but in 1981, California ranked thirty-third.

[6] Break, *Proposition 13's Tenth Birthday: Occasion for Celebration or Lament*? (Unpublished paper presented at Lincoln Institute of Land Policy's Tax Policy Roundtable, April 28-30, 1988, Coronado, California), pp. 14-21.

[7] The coefficient of dispersion is the average absolute deviation of a group of assessment ratios, taken around the median ratio and expressed as a percentage of that measure.

[8] U.S. Bureau of the Census, *1977 Census of Governments*, vol. 2, *Taxable Property Values and Assessment-Sales Price Ratios* (Washington, D.C., 1978) and U.S. Bureau of the Census, *1982 Census of Governments*, vol. 2, *Taxable Property Values and Assessment/Sales Price Ratios* (Washington, D.C., 1984).



An increase in the coefficient of dispersion implies an increase in the average inequality of property tax burdens.[9] Again using data on California from the Census of Governments as an example, the *average* property tax "mispayment"[10] in California increased 43 percent between 1976 and 1981, from about $140 to about $200, even though the average effective tax rate decreased from 1.7 percent to about 0.7 percent of market value.

Inequities in California assessing continue to this day, despite the recent cooling off of the real estate market there. A report by the California Senate Commission on Property Tax Equity and Revenue, published in June 1991, recognized that "owners of property purchased in 1975 today pay far less taxes than a recent home buyer for comparable property"[11] and that "parcels with vastly

[9] Geraci and Plourde, "Benefits and Costs of Improved Property Tax Assessment," in International Association of Assessing Officers, *Analyzing Assessment Equity: Techniques for Measuring and Improving the Quality of Property Tax Administration* (Chicago, 1977).

[10] The assumptions and calculations upon which this illustration is based are:

| Year (1) | Average Property Value (2) | Coefficient of Dispersion (3) | Average Assessment Error (Col. 2 x Col. 3) (4) | Effective Tax Rate (5) | Average "Mispayment" (Col. 4 x Col. 5) (6) |
|---|---|---|---|---|---|
| 1976 | $ 47,000 | 0.171 | $ 8,100 | 0.017 | $140 |
| 1981 | 100,600 | 0.282 | 28,400 | 0.007 | 200 |

Sources:

U.S. Bureau of the Census, *1977 and 1982 Censuses of Government*, vol. 2: column 2, tables 9 and 11, respectively; column 3, tables 16 and 18, respectively; and column 5, tables 20 and 22, respectively.

[11] *Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate* (Sacramento, 1991), p. 32.

different market values can be found which pay the same property taxes."[12] Concluding that the aggregate effect of "side-by-side" disparities on the tax rolls is an "unequal distribution of the overall property tax burden,"[13] the Commission also cited a sampling of owner-occupied homes on the 1988 assessment rolls by the State Board of Equalization, indicating that about 2 million homes (about 44 percent of all such residences) still had a 1975 acquisition base year, with their owners paying about a fourth of the total property tax bill for the state. The remaining 2.5 million homes, representing 56 percent of such properties, were responsible for three-fourths of the taxes levied.[14]

What California has, then, is a monstrously inequitable assessing system—one that permits properties identical *in every way save one*, the date of their acquisition, to be assessed and taxed in a variety of different ways, depending on the dates they were last sold. Furthermore, the inequities inherent in the California system will just get worse over time, as the Senate Commission has recognized,[15] to the extent changes in market values are not reflected in the maximum annual two-percent assessment increase permitted by Proposition 13.[16]

[12] *Id.*

[13] *Id.* at 33.

[14] *Id.*

[15] *Id.* at 1 and 32.

[16] Proposition 13 created what is likely to be a more inequitable system over time than the one this Court invalidated in *Allegheny*, because of the two-percent limit on annual increases in assessments. Across-the-board percentage increases in assessments do not reduce inequities, and they are not the equivalent of an "honest effort" to eliminate discrimination. *See Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350, 353 (1918). Nonethe-

(Footnote continued on following page)



As for the rationality of California's assessing system, several reasons for the adoption of "acquisition value" assessing might be advanced. It might be argued that such a system enables property owners to accurately predict their future tax liability. Furthermore, it might be said that such a system treats people "fairly," based on decisions made and expectations created at the time of purchase, rather than taxing them on the basis of unrealized "paper" gains or losses.

Supposing reasons for the adoption of a theoretically pure "acquisition value" assessing system, however, is not the same as developing a "rational basis" for the system Petitioner and the amicus are here attacking. California's system, ever since the adoption of Proposition 13, has been far from a pure "acquisition value" system, and it should not be upheld merely because a pure "acquisition value" system—which exists nowhere in the real world, to the amicus's knowledge—might have some theoretical underpinnings.[17]

The Respondents would have this Court ignore the fact that Proposition 13 itself denied "acquisition value" assessment's benefits, at least partially, to those California property owners who had acquired their property before the 1975-76 tax year, arbitrarily bringing their values up to

[16] *continued*

less, it should be noted that the Webster County system permitted the county assessor the administrative discretion needed to make three separate ten-percent increases in assessments over a seven-year span—giving the assessor greater opportunity to minimize assessment inequity than the two-percent cap affords California assessors. *See Allegheny*, 488 U.S. 336, 338 (1989).

[17] *See FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944), noting, in the rate-making context, that "[i]t is not theory, but the impact . . . that counts."

the level for that year. Furthermore, they overlook the departure from pure "acquisition value" assessing in Proposition 13's creation of a limit for increases in assessed value, but not decreases based on declining market values since acquisition.

After adoption of Proposition 13, California voters began increasing the irrationality of their assessing system by creating exceptions to the reassessment-upon-transfer requirement of "acquisition value" assessing. Thus, acquisition valuation was waived for transfers between spouses or as part of a divorce settlement,[18] and taxpayers 55 years of age or older were allowed to sell their residences and transfer their old assessed values to their new homes, provided they were no more valuable than the residences sold.[19] Parents were permitted to transfer not only their principal residence, reassessment-free, to their children, but also up to $1 million worth of other real property (or the children could be the transferors and the parents recipients of this assessment windfall).[20]

Not only by referendum, but by action of the California legislature and administrative regulation, complexities and irrationalities have been added to the California "welcome stranger" assessing system. From special exemptions for transfers among some, but not all, joint tenants,[21] to

[18] Cal. Const. Art. XIIIA, §32(g); Cal. Rev. & Tax. Code §63.

[19] Cal. Const. Art. XIIIA, §32(a); Cal. Rev. & Tax. Code §69.5.

[20] Cal. Const. Art. XIIIA, §2(h); Cal. Rev. & Tax. Code §63.1. The $1 million exemption applies to *each* parent or child making the transfer. For a married couple transferring to children, the exemption is $2 million worth of property. The dollar value for the exemption is calculated in *assessed* value, not current market value, which can be a far different dollar amount.

[21] *See* Cal. Rev. & Tax. Code §65.



exclusions from reassessment and special rules applying to transfers involving corporations and other legal entities[22] (well summarized in an amicus curiae brief filed with the Court in this case by the Building Industry Association of Southern California), the facade of "acquisition value" has been removed from assessing in California. And the complexity only increases when the statutes and rules relating to assessment and taxation of new construction at current market value—an integral part of the system established by Proposition 13—are taken into consideration.[23]

The amicus certainly would not argue that a state, in creating a classification system, may not also adopt complex rules for its implementation—if the classification system itself is a permissible one and if the rules serve the rational purpose for which the classification system was created, or even some other rational purpose. In this case, however, the rules for implementation adopted by California demonstrate that the reasons previously advanced for the creation of California's current assessment system were false ones. The real purpose of Californians who created that system was never to establish pure "acquisition value" assessing in California, for which a theoretical justification might be imagined in terms of making tax burdens generally fairer, or even more predictable. It was simply to shift tax burdens to more recent purchasers of property in the state and those who would build there—a pull-up-the-ladder, no-growth effort designed to make sure the current property owners could keep their cottages in the sun with relatively low taxes (and even

[22] *See, e.g.*, Cal. Rev. & Tax. Code §62(a) and §64; Cal. Code of Regulations, Title 18, Rule 462(j).

[23] *See, e.g.*, Cal. Rev. & Tax. Code §70 and §71; Cal. Code of Regulations, Title 18, Rules 463(a) and (b).

transfer them within the family at no tax cost) while would-be newcomers to the favored class of California property owners either picked up a disproportionate share of the tax tab for the costs of state and local government, or, better yet, left ownership of California to the advantaged class.

The inequities created by the current California assessing system would not be so bad if the irrationality of the system weren't so great—and vice versa. But clearly, the California "welcome stranger" system fails the "rational basis" test, just as it fails to provide for an equitable sharing of ad valorem property tax burdens in the state.

It is for reasons such as those we have illustrated here that IAAO recommends in its policy statements that assessments should be based on current market values. The property tax has been generally conceived to be an ad valorem tax, which means that a tax levy is apportioned among taxpayers according to the value of each taxpayer's property. In a dynamic economy, not only are revenue needs changing, but the values of property are also changing. While some values increase, others remain stagnant, and still others decline. It follows that as long as property values are changing, a uniform relationship between property values and property taxes can be attained only if current market value is the basis for assessment, and current market value assessment clearly implies an annual assessment program.

An annual assessment program requires assessors to: consciously and continuously reevaluate the factors that affect value; express the interactions of those factors mathematically; use those mathematical expressions, which are referred to as mass appraisal models, and other mass appraisals, to estimate the values of properties; and repeat



this process annually to maintain equitable assessments at statutory levels. Annual assessment does not require assessors to change all assessments each year, but it does require assessors to maintain the capability of changing each assessment each year if a change is warranted, and to maintain an effective program for periodically reinspecting properties.

For a variety of reasons, legal assessment standards may not always conform to IAAO's recommendations, and contemporary standards in assessing view as marginally acceptable assessment systems that ensure intervals of no greater than four years between reappraisals of each and every taxable property in an assessment jurisdiction. Plainly unacceptable, however, are systems permitting genuine reappraisals only if they are triggered by an external activity affecting comparatively few properties, such as "welcome stranger" assessing.[24]

In this case, IAAO believes the inequities created by "welcome stranger" assessing in California could have been avoided by reference to contemporary assessing standards in the implementation of a system based on current market values. However, it is not necessary, in deciding this case, for the Court to insist that any particular system of assessing be adopted nationwide for property tax purposes—and, in any event, that would be an improper usurpation of the legislative function.[25]

[24] International Association of Assessing Officers, *Improving Real Property Assessment: A Reference Manual* (Chicago, 1978), pp. 331-32.

[25] Current market value assessment may be the only system that will safely meet equal protection requirements in the assessing of property for general ad valorem tax purposes. But the amicus is

(Footnote continued on following page)

While the amicus advocates current market value assessing, the Court in this case need only declare the California system unconstitutional and direct that state's lawmakers to develop a system that meets equal protection requirements, which the Senate Commission's report indicates they are prepared to do.[26] The amicus, then, respectfully submits that this Court should recognize the inequities and irrationality inherent in California's "welcome stranger" assessing, and declare that system violates the Equal Protection Clause of the Fourteenth Amendment.

2.

**Considering The Hardship And Practical Consequences That Would Result From A Retroactive Invalidation Of Assessments For Ad Valorem Property Tax Purposes In California, This Court Should Give Only Prospective Effect To Its Holding That "Welcome Stranger" Assessing, As Practiced In California, Violates Constitutional Equal Protection Requirements.**

Although the amicus is urging this Court to strike down California's system of "welcome stranger" assessing as unconstitutional, IAAO is not unmindful of the impact a retroactive application of such a ruling would have in California. The California Assessors Association, in a separately filed amicus curiae brief in this matter, has explained the hardships and practical consequences that would be created by the retroactive application of a decision striking down California's "welcome stranger" assessing. Based on the analysis contained in that brief, IAAO asks this Court to give maximum application to the principle of "nonretroactivity" in deciding the case now before it.

In *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-107 (1971), this Court enumerated three factors that should be considered in dealing with the "nonretroactivity" question: first, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed; second, the Court must weigh the merits and demerits in each case by looking to the prior history of the rule in question; and third, the Court must weigh the inequity imposed by retroactive application. Recent decisions of this Court have left some doubt as to whether the Court is still willing to apply the *Chevron Oil* analysis.[27] But the amicus feels that such an analysis is particularly applicable to this case.

Applying the three-part *Chevron Oil* test, it is certainly true that this case is one of first impression, since the Court expressly refused to rule on the equal protection

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[25] *continued*

not prepared to argue that another system—at least in theory—could not pass constitutional tests, even if California's does not. Still less is the amicus inclined to argue that different systems might not constitutionally be applied to a completely different tax scheme, such as an income tax on capital gains or a special tax on securities. *See, e.g., Bell's Gap Railroad Company v. Pennsylvania*, 134 U.S. 232 (1890), in which a tax was found constitutionally applied to the par or nominal value of corporate bonds and securities.

[26] *See Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate* (Sacramento, 1991), pp. 4-16, in which the Commission makes certain recommendations for a phased-in return to a market value assessment system and the correction of inequities in California assessing.



[27] *See, e.g., James B. Beam Distilling Co. v. Georgia*, No. 89-680 (Supreme Court of the United States, June 20, 1991), in which the question of "nonretroactivity" produced five separate opinions, none of which was filed on behalf of more than three of the Justices.

questions this case presents when the Court decided *Allegheny*. Although a decision to strike down California's "welcome stranger" assessing follows naturally from the ruling in *Allegheny*, as the amicus has demonstrated, it cannot be said that such a decision was clearly foreshadowed by that case so that it would not have been reasonable for assessing authorities and taxpayers in California to rely on the continued viability of Proposition 13's assessment freeze in determining how property should be valued for tax purposes.

With respect to weighing the merits and demerits of applying "nonretroactivity" in this case based on the prior history of equal protection as a guarantee of equity in assessments, it would also appear that the merits of applying the "nonretroactivity" rule in the case at bar would outweigh the demerits, given the limited resources of the State of California and its subdivisions. Equity in assessments, it would seem, would be best promoted by allowing taxpayers and government to concentrate on the reassessments for future years that will be necessitated by an overturning of the "welcome stranger" rule, rather than dwelling on the inequities that have been an unfortunate part of assessing in California since the adoption of Proposition 13.

Finally, for the reasons expressed in the brief filed by the California Assessors Association, application of "nonretroactivity" in overturning "welcome stranger" assessing would seem to be necessitated by the hardship and practical consequences that would be created for California assessing officers, and the taxpayers who must underwrite the expense of property tax assessing in California, if the Court's ruling invalidated all assessments made since the so-called "acquisition value" system was established in California. The California Assessors Association



brief clearly indicates the substantial inequitable results that retroactive application might produce for the sake of eventually creating a more equitable system of assessment for property tax purposes in California.

Concerned about the potential hardship a retroactive invalidation of "welcome stranger" assessing in California might cause, then, and believing that the prospective application of the Court's ruling would more readily facilitate adoption of a substitute system for property tax administration allowing for greater equity in assessment, the amicus asks that the Court give prospective effect to a ruling that "welcome stranger" assessing, as practiced in California, violates the U.S. Constitution.

## CONCLUSION

IAAO respectfully concludes this Court should hold that, in ad valorem property tax administration, the California system of assessing recently sold property based on its sale price, while not reassessing similar but unsold property, is discriminatory and a direct violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, though we urge only a prospective, and not a retroactive invalidation of that system. As the Court noted in *Allegheny*, 488 U.S. 336, 346 (1989), "[T]he fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." If this Court fails to overturn "welcome stranger" assessing, large numbers of property owners will be denied the opportunity of receiv-

ing such a fair apportionment of the property tax burden and the principle of equity in assessment and taxation will be dealt a major blow.

Respectfully submitted,

JAMES F. GOSSETT
*Counsel of Record*
HOWE & HUTTON, LTD.
20 North Wacker Drive
Suite 3550
Chicago, Illinois 60606
(312) 263-3001

*Attorney for Amicus Curiae International Association of Assessing Officers*